

Employees in Indiana are subject to two state wage garnishment statutes. The first is a general wage garnishment law that governs wage withholding for the payment of all judgments, including those arising from debts and from support obligations which is the Indiana Uniform Consumer Credit Code. The second was enacted in April of 1985, pursuant to a federal mandate and applied only to wage withholding for the payment of child support obligations.

While both laws have several common provisions, each will be discussed separately. This information is intended for general informational purposes only. Questions or request for advice concerning specific problems should be directed to your attorney or, if involving child support, to the Child Support Division of the Indiana State Department of Family and Social Services.

## INDIANA'S CHILD SUPPORT WAGE WITHHOLDING LAW

As required by the federal Child Support Enforcement Amendments of 1984, the Indiana income withholding law took effect in Indiana on September 1, 1985. The law applies to all employers, regardless of size. It permits a court or a child support agency of the Indiana State Department of Public Welfare to order any employer to withhold delinquent and present child support obligations from an employee's earnings. The amount withheld must be submitted to the clerk of the court named in the notice to withhold. Below are the answers to several questions employers may have with respect to the law.

### How is the obligation to withhold triggered?

The employer is not obligated to withhold support obligations of an employee unless and until it receives a written notice from a court or a child support agency. In addition to other pertinent information, the notice must state:

- ◆ The name of the affected employee and the fact that he or she is delinquent in the payment of child support.
- ◆ The total amount to be withheld each pay period from the employee's income. (This amount may have to be computed by using the conversion table which should be included with the notice.)
- ◆ The clerk of the court to which the amount withheld must be sent.
- ◆ The fact that the withholding must be done until:
  - (1) further notice is received from the court or a child support agency, or
  - (2) the employee is terminated.

**What happens if an employer hires or rehires a person who already has a child support wage garnishment outstanding against him or her?**

In either event, the employer need not withhold until a new notice to withhold is received.

### When must the withholding begin?

The employer must start withholding from the affected employee's pay no later than the first pay period that occurs after 14 days following the date the notice was mailed. From then on, each time the employee is paid, the proper amount must be withheld and forwarded to the clerk of the court. If the employer is required to withhold child support income from more than one employee that is payable to the same clerk, the employer may submit to such clerk one total amount each pay period for all affected employees so long as the portion of the payment attributable to each employee is specified.

### What is the maximum amount that may be withheld each pay period from the employee's pay?

The permissible limit on withholding under the new law depends upon the affected employee's present dependents and prior support obligations. Sixty percent of the employee's weekly disposable earnings may be withheld, unless the employee is presently supporting a spouse or a dependent child other than the one for whom the support is being ordered. In the latter case only 50% of the employee's disposable earnings may be withheld. In either case, the maximum proportion is increased by 5% if the employee is more than 12 weeks behind in the payment of support.

In most instances, the maximum percentage of disposable earnings subject to withholding for the affected employee will be specified in the notice. In the event that the agency or court does not know the employee's present support obligations, the employer may be required to elicit this information from the employee.

### What are "disposable earnings"?

This term is defined to include only those earnings which are left after all deductions required by law are taken from the employee's check. Hence, amounts required to be withheld for social security and income taxes would not be included in disposable earnings. On the other hand, amounts withheld from the employee's earnings at his request or through an agreement with a labor union (union dues) or similar organization are included in disposable earnings since they are not considered deductions required by law for purposes of wage garnishment. In determining the maximum amount that may be subject to child support withholdings, garnishments now being deducted are also included in disposable earnings.

**Example:** An employee's gross wages for the week are \$250. From this amount, the employer withholds \$40 in federal, state, and local income taxes; \$20 in social security taxes; \$10 in union dues; and \$5 for the United Way. The employee has no present spouse or dependent child other than the one for whom support has been ordered and he is not more than 12 weeks behind in the payment of support.

The employee's disposable earnings for the week are \$190 (\$250 - \$60). The maximum amount that may be withheld from his check to comply with the child support withholding law is \$114 (60% of the \$190).

### Is the employer entitled to a fee for the administrative costs of withholding?

**Yes.** At the employer's option, it may deduct a fee of \$2 from the employee's pay each time income is withheld and forwarded to the clerk of the court. The assessment of this fee will not decrease the amount of income that must be submitted to the court unless the total amount withheld would otherwise exceed the permissible limit.

**Example:** If the wage withholding order is for \$115 per week, and the maximum amount subject to withholding for the particular employee is \$115 per week, the employer may still deduct a fee of \$2 from the employee's check. However, the employer must then submit only \$113 to the clerk that week.

### What if the employee already has other assignments of garnishments on his or her wages?

While the total amount withheld may never exceed the permissible limit, the child support withholding obligation takes priority over any other claim, secured or unsecured, on income except claims for federal, state, and local taxes. If there is more than one child support withholding order against the same employee, the orders must be complied with on a "first come, first served" basis.

**Example:** An employee is already subject to a child support wage withholding order in the amount of \$100 per week. The maximum that may be withheld from this particular employee's weekly earnings is \$120 per week. The second child support wage withholding notice for the same employee is received by the employer for \$50 per week. The employer would continue to withhold and submit \$100 per week on the first order and would begin withholding and submitting only \$20 per week on the second.

### What happens if the affected employee's employment is terminated?

The employer must notify either the court or the child support agency (this will be specified in the original notice) of the termination of employment within ten days of its occurrence. At the same time, the employer must also supply the terminated employee's last known address and the name and address of his or her new employer, if known. This will end the employer's obligation under the new law.

### What are the penalties, if any, for failing to comply with or attempting to evade the requirements of the law.

The employer is liable for any amount it fails to withhold and submit pursuant to any child support withholding notice. Further, an affected applicant or employee may recover at least \$100 from the employer in a civil action if the employer refuses to employ,

discharges, or otherwise disciplines him or her because of the withholding requirement. This specific statutory remedy does not affect the applicant's or employee's right to seek any other form of legal redress that may be available to him or her because of the refusal to employ, discharge from employment, or take disciplinary action.

**What if I have further questions regarding the child support wage withholding law?**

You should seek legal advice or contact the Child Support Division of the Indiana State Department of Family and Social Services. The Division has established a toll free number that employers may call with questions concerning the new law. The number is 1-800-840-8757.

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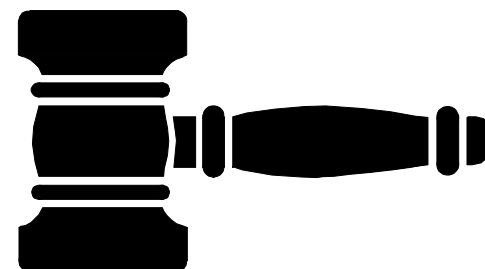
The Indiana Department of Financial Institutions, Division of Consumer Credit has many other credit related brochures available, such as:

- Answers to Credit Problems
- Applying for Credit
- At Home Shopping Rights
- Bankruptcy Facts
- Buried in Debt
- Car Financing Scams
- Charge Card Fraud
- Choosing A Credit Card
- Co-Signing
- Credit and Divorce
- Deep in Debt?
- Equal Credit Opportunity
- Fair Credit Reporting
- Fair Debt Collection
- Gold Cards
- High Rate Mortgages
- Home Equity Credit Lines
- How to Avoid Bankruptcy
- Look Before you Lease
- Repossession
- Reverse Mortgage Loans
- Rule of 78s – What is it?
- Scoring for Credit
- Shopping for Credit
- Using Credit Cards
- Variable Rate Credit
- What is a Budget?



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# CHILD SUPPORT WAGE GARNISHMENT IN INDIANA



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